IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
October 25, 2004 Session

STATE EX REL. JUANITA WILLIAMS, ET AL. v. TOWN OF MIDTOWN, ET AL.

Appeal from the Chancery Court for Roane County
No. 14,005 Frank V. Williams, III, Chancellor

No. E2004-01007-COA-R3-CV - FILED DECEMBER 16, 2004

The issue in this case is the constitutionality of Tenn. Code Ann. § 6-1-201 which sets population and distance limitations on the incorporation of cities. The town of Midtown, Tennessee claims the statute deprives it of equal protection of the laws guaranteed by the United States Constitution and Article XI, Section 8 of the Tennessee Constitution. The Chancellor granted the Tennessee Attorney General's motion to dismiss Midtown's counter-complaint under Tenn. R.Civ.P. 12.02(6) for failure to state a claim upon which relief can be granted. We hold that the statue is constitutional and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR. and D. MICHAEL SWINEY, JJ., joined.

Gerald Largen, Kingston, Tennessee, for the Appellant, Town of Midtown, Tennessee.

John McFarland, Kingston, Tennessee, for the Appellees, State of Tennessee *ex rel*. Juanita Williams, et al.

Paul G. Summers, Michael E. Moore, and Ann Louise Vix, Nashville, Tennessee, for the Appellee, Tennessee Attorney General and Reporter.

OPINION

On August 6, 1998, voters in the territory proposed to be incorporated as the town of Midtown held an election and voted to incorporate under the Mayor-Aldermanic city charter form of government, Tenn.Code Ann. § 6-1-201, *et seq.* Midtown's election was held pursuant to section 9(f)(3) of 1998 Tenn. Pub. Acts Ch. 1101, codified at Tenn.Code Ann. § 6-58-108(f)(3). This section was subsequently ruled unconstitutional in *Huntsville v. Duncan*, 15 S.W.3d 468 (Tenn. App. 1999).

On June 18, 2001, Plaintiffs, citizens of Midtown, filed a complaint alleging that Midtown was "an illegal de facto municipal corporation," having been incorporated pursuant to an unconstitutional statutory provision, and that Midtown's corporate charter should be dissolved because it did not meet the general minimum population and distance requirements of Tenn. Code Ann. § 6-1-201.

On August 28, 2003, Midtown filed a counter-complaint alleging that the minimum population and distance requirements established by Tenn.Code Ann. § 6-1-201(a)(1) and (b)(1)(A) unconstitutionally deprived it of equal protection under the law. The Tennessee Attorney General answered, denying that the challenged provisions were unconstitutional, and filed a Tenn. R. Civ. P. 12.02(6) motion to dismiss the counter-complaint for failure to state a claim upon which relief can be granted. The Chancellor granted the motion, dismissed the counter-complaint and entered an order dissolving Midtown's corporate charter.

Midtown appeals and argues that the Chancellor erred in dismissing its counter-complaint. Our standard of review is as recently stated by the Supreme Court as follows:

> A Rule 12.02(6) motion to dismiss only seeks to determine whether the pleadings state a claim upon which relief can be granted. Such a motion challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof, and, therefore, matters outside the pleadings should not be considered in deciding whether to grant the motion. *See Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.,* 986 S.W.2d 550, 554 (Tenn.1999). In reviewing a motion to dismiss, the appellate court must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences. *See Pursell v. First Am. Nat'l Bank,* 937 S.W.2d 838, 840 (Tenn.1996). It is well-settled that a complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his or her claim that would warrant relief. *See Doe v. Sundquist,* 2 S.W.3d 919, 922 (Tenn.1999); *Fuerst v. Methodist Hosp. S.,* 566 S.W.2d 847, 848 (Tenn.1978). . .We review the trial court's legal conclusions *de novo* without giving any presumption of correctness to those conclusions.

Trau-Med of America, Inc. v. Allstate Ins. Co. 71 S.W.3d 691, 696-697 (Tenn. 2002).

The challenged statute reads in relevant part as follows:

> (a)(1) The residents of any incorporated municipality or of any territory wanting to incorporate under this charter may adopt the provisions of this chapter and chapters 2-4 of this title in the manner provided in this chapter. Thereupon, the municipality or territory shall be and become incorporated and be governed as herein set forth. No unincorporated territory shall be incorporated under the provisions of this charter unless such territory contains not fewer than one thousand five hundred (1,500) persons, who shall be actual residents of the territory.
>
> * * *
>
> (b)(1)(A) Except as provided in subdivision (b)(2), no unincorporated territory shall be incorporated within three (3) miles of an existing municipality or within five (5) miles of an existing municipality of one hundred thousand (100,000) or more in population according to the latest census certified by the state planning office. "Existing municipality" and "existing municipality of one hundred thousand (100,000) or more in population" do not include any county with a metropolitan form of government with a population of one hundred thousand or more according to the 1990 federal census or any subsequent census.

Tenn.Code Ann.§ 6-1-201(a)(1) and (b)(1)(A).

Midtown challenges the requirements of a minimum 1,500 population and the 3-mile and 5-mile minimum distance from an existing municipality as being "arbitrary and capricious," elaborating in its counter-complaint as follows:

> The arbitrariness of the classification is obvious when one considers that a group of 1499 citizens may not incorporate themselves as a municipality, whereas a group containing only one single solitary additional citizen may freely incorporate and enjoy all of the advantages, privileges, rights and immunities that municipal incorporation conveys. 1500 gets it, 1499 doesn't; that is neither good sense nor good law.

Midtown argues that the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and Article XI, Section 8 of the Tennessee Constitution precludes the

state legislature from setting such minimum population and geographic distance standards for the incorporation of a municipality. We note at the outset that there is no allegation that infringement of a fundamental right is involved in this case, nor that the General Assembly has created a classification involving a suspect or protected class, such as race or national origin.

Regarding the federal constitutional claim, the United States Supreme Court made the following pertinent statements in the case of *Hunter v. Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151(1907):

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. . .The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.

Hunter, 207 U.S. 161 at p.178-79.

Over the years since *Hunter,* the Court has noted at least one important exception to the general rule enunciated above, *see, e.g., Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960); but no such exception is applicable here. We hold that the Equal Protection Clause of the U.S. Constitution is not implicated under the circumstances of the present case.

Article XI, Section 8 of the Tennessee Constitution provides in relevant part as follows:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

The Tennessee Supreme Court has stated it is a "firmly established rule that in order for the provisions of Article XI, Section 8 to come into play, the local act under attack must contravene some general law that has mandatory, statewide application." *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn.1992).

The Tennessee Attorney General argues that Tenn. Code Ann. § 6-1-201 contravenes no general law, but is itself a general law of statewide application. This court has held § 6-1-201(a)(1) and (b)(1)(A) to be a general law. *Huntsville v. Duncan*, 15 S.W.3d 468 (Tenn.App.1999); *Oakland v. McCraw*, 126 S.W.3d 29 (Tenn. App. 2003). We therefore hold that Article XI, Section 8 is not implicated by the general law regarding the incorporation of cities statewide, Tenn.Code Ann. § 6-1-201(a)(1) and (b)(1)(A).

In its answer to the original complaint, Midtown asserted that the Plaintiffs should be estopped from filing this action, stating as follows:

> These relators are estopped to proceed further with this litigation by their actions in initiating a new referendum of the citizenry of the Town of Midtown for the purpose of surrendering the Town's charter. This referendum was conducted by the Roane County Election Commission based up[on] petitions circulated by and signed by the relators. As a part of their campaign to secure the vote of the citizens of Midtown to relinquish the Town's charter, these relators waged a vigourous [sic] electioneering campaign, despite which a goodly majority of the vote favoured [sic] the continuing retention of the charter and the continuation of the existence of the Town as a functioning municipality of the State of Tennessee. In equity, these relators should not be allowed to submit their claims and opposition to the existence of the Town to the sacred arbitrament of the ballet box and, having lost in that forum, then attempt to achieve the same

> end through their suit in this Court. It is contrary to all principles of equity, democracy, fair play and the American way to allow these relators to lose at the polls and then attempt to reverse their loss there by getting "a second bite at the apple" by pursuing this litigation.

We concur with the trial court in its finding that, accepting the above allegations as entirely true, they do not create a circumstance under which the doctrine of judicial estoppel or equitable estoppel should be invoked.

For the aforementioned reasons, the judgment of the trial court dismissing Midtown's counter-complaint is affirmed, as is the trial court's ruling in its entirety. Costs on appeal are assessed to the Appellant, Town of Midtown, and its surety.

_____

SHARON G. LEE, JUDGE